

HOUSE SUBSTITUTE
FOR
SENATE BILL NO. 496

AN ACT

To repeal sections 364.030, 364.105, 365.030,
367.140, 367.509, 408.140, 408.233, and
408.500, RSMo, and to enact in lieu thereof
eight new sections relating to the licensing,
regulation, and activities of lenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 364.030, 364.105, 365.030, 367.140,
367.509, 408.140, 408.233, and 408.500, RSMo, are repealed and
eight new sections enacted in lieu thereof, to be known as
sections 364.030, 364.105, 365.030, 367.140, 367.509, 408.140,
408.233, and 408.500, to read as follows:

364.030. 1. No person shall engage in the business of a
financing institution in this state without a license therefor as
provided in this chapter; except, however, that no bank, trust
company, loan and investment company, licensed sales finance
company, registrant under the provisions of sections 367.100 to
367.200, RSMo, or person who makes only occasional purchases of
retail time contracts or accounts under retail charge agreements
and which purchases are not being made in the course of repeated
or successive purchase of retail installment contracts from the
same seller, shall be required to obtain a license under this

1 chapter but shall comply with all the laws of this state
2 applicable to the conduct and operation of a financing
3 institution.

4 2. The application for the license shall be in writing,
5 under oath and in the form prescribed by the director. The
6 application shall contain the name of the applicant; date of
7 incorporation, if incorporated; the address where the business is
8 or is to be conducted and similar information as to any branch
9 office of the applicant; the name and resident address of the
10 owner or partners or, if a corporation or association, of the
11 directors, trustees and principal officers, and other pertinent
12 information as the director may require.

13 3. The license fee for each calendar year or part thereof
14 shall be the sum of three hundred dollars for each place of
15 business of the licensee in this state which shall be paid into
16 the general revenue fund. The director may establish a biennial
17 licensing arrangement but in no case shall the fees be payable
18 for more than one year at a time.

19 4. Each license shall specify the location of the office or
20 branch and must be conspicuously displayed therein. In case the
21 location is changed, the director shall either endorse the change
22 of location of the license or mail the licensee a certificate to
23 that effect, without charge.

24 5. Upon the filing of an application, and the payment of
25 the fee, the director shall issue a license to the applicant to

1 engage in the business of a financing institution under and in
2 accordance with the provisions of this chapter for a period which
3 shall expire the last day of December next following the date of
4 its issuance. The license shall not be transferable or
5 assignable. No licensee shall transact any business provided for
6 by this chapter under any other name.

7 364.105. 1. No person shall engage in the business of a
8 premium finance company in this state without first registering
9 as a premium finance company with the director.

10 2. The annual registration fee shall be three hundred
11 dollars payable to the director as of the first day of July of
12 each year. The director may establish a biennial licensing
13 arrangement but in no case shall the fees be payable for more
14 than one year at a time.

15 3. Registration shall be made on forms prepared by the
16 director and shall contain the following information:

17 (1) Name, business address and telephone number of the
18 premium finance company;

19 (2) Name and business address of corporate officers and
20 directors or principals or partners;

21 (3) A sworn statement by an appropriate officer, principal
22 or partner of the premium finance company that:

23 (a) The premium finance company is financially capable to
24 engage in the business of insurance premium financing; and

25 (b) If a corporation, that the corporation is authorized to

1 transact business in this state;

2 (4) If any material change occurs in the information
3 contained in the registration form, a revised statement shall be
4 submitted to the director accompanied by an additional fee of one
5 hundred dollars.

6 365.030. 1. No person shall engage in the business of a
7 sales finance company in this state without a license as provided
8 in this chapter; except, that no bank, trust company, savings and
9 loan association, loan and investment company or registrant under
10 the provisions of sections 367.100 to 367.200, RSMo, authorized
11 to do business in this state is required to obtain a license
12 under this chapter but shall comply with all of the other
13 provisions of this chapter.

14 2. The application for the license shall be in writing,
15 under oath and in the form prescribed by the director. The
16 application shall contain the name of the applicant; date of
17 incorporation, if incorporated; the address where the business is
18 or is to be conducted and similar information as to any branch
19 office of the applicant; the name and resident address of the
20 owner or partners or, if a corporation or association, of the
21 directors, trustees and principal officers, and such other
22 pertinent information as the director may require.

23 3. The license fee for each calendar year or part thereof
24 shall be the sum of three hundred dollars for each place of
25 business of the licensee in this state. The director may

1 establish a biennial licensing arrangement but in no case shall
2 the fees be payable for more than one year at a time.

3 4. Each license shall specify the location of the office or
4 branch and must be conspicuously displayed there. In case the
5 location is changed, the director shall either endorse the change
6 of location on the license or mail the licensee a certificate to
7 that effect, without charge.

8 5. Upon the filing of the application, and the payment of
9 the fee, the director shall issue a license to the applicant to
10 engage in the business of a sales finance company under and in
11 accordance with the provisions of this chapter for a period which
12 shall expire the last day of December next following the date of
13 its issuance. The license shall not be transferable or
14 assignable. No licensee shall transact any business provided for
15 by this chapter under any other name.

16 367.140. 1. Every lender shall, at the time of filing
17 application for certificate of registration as provided in
18 section 367.120 hereof, pay the sum of three hundred dollars as
19 an annual registration fee for the period ending the thirtieth
20 day of June next following the date of payment and in full
21 payment of all expenses for investigations, examinations and for
22 the administration of sections 367.100 to 367.200, except as
23 provided in section 367.160, and thereafter a like fee shall be
24 paid on or before June thirtieth of each year; provided, that if
25 a lender is supervised by the commissioner of finance under any

1 other law, the charges for examination and supervision required
2 to be paid under said law shall be in lieu of the annual fee for
3 registration and examination required under this section. The
4 fee shall be made payable to the director of revenue. If the
5 initial registration fee for any certificate of registration is
6 for a period of less than twelve months, the registration fee
7 shall be prorated according to the number of months that said
8 period shall run. The director may establish a biennial
9 licensing arrangement but in no case shall the fees be payable
10 for more than one year at a time.

11 2. Upon receipt of such fee and application for
12 registration, and provided the bond, if required by the director,
13 has been filed, the director shall issue to the lender a
14 certificate containing the lender's name and address and reciting
15 that such lender is duly and properly registered to conduct the
16 supervised business. The lender shall keep this certificate of
17 registration posted in a conspicuous place at the place of
18 business recited in the registration certificate. Where the
19 lender engages in the supervised business at or from more than
20 one office or place of business, such lender shall obtain a
21 separate certificate of registration for each such office or
22 place of business.

23 3. Certificates of registration shall not be assignable or
24 transferable except that the lender named in any such certificate
25 may obtain a change of address of the place of business therein

1 set forth. Each certificate of registration shall remain in full
2 force and effect until surrendered, revoked, or suspended as
3 herein provided.

4 367.509. 1. A title loan license applicant must have and
5 maintain capital of at least seventy-five thousand dollars at all
6 times.

7 2. The license application shall be in writing, under oath
8 and in the form prescribed by the director. The application
9 shall contain the name of the applicant, date of formation if a
10 business entity, the address of each title loan office operated
11 or sought to be operated, the name and residential address of the
12 owner, partners, directors, trustees and principal officers, and
13 such other pertinent information as the director may require. A
14 corporate surety bond in the principal sum of twenty thousand
15 dollars per location shall accompany each license application.
16 The bond shall be in a form satisfactory to the director and
17 shall be issued by a bonding company or insurance company
18 authorized to do business in this state in order to ensure the
19 faithful performance of the obligations of the applicant and the
20 applicant's agents and subagents in connection with title loan
21 activities. An applicant or licensee may, in lieu of filing any
22 bond required pursuant to this section, provide the director with
23 an irrevocable letter of credit as defined in section 400.5-103,
24 RSMo, in the amount of twenty thousand dollars per location,
25 issued by any bank, trust company, savings and loan or credit

1 union operating in Missouri in a form acceptable to the director.

2 3. Every person applying for a title loan license shall pay
3 one thousand dollars as an investigation fee. Applicants for
4 additional title lending licenses shall pay one thousand dollars
5 per additional location as an investigation fee. The lender
6 shall, beginning with the first license renewal, pay annually to
7 the director a fee of one thousand dollars for each licensed
8 location.

9 4. Each license shall specify the location of the title
10 loan office and shall be conspicuously displayed therein. Before
11 any title lending office may relocate, the director shall approve
12 such relocation by mailing the licensee a new license to that
13 effect, without charge.

14 5. Upon the filing of the application, and the payment of
15 the fee, by a person eligible to apply for a title loan license,
16 the director shall issue a license to engage in the title loan
17 business in accordance with sections 367.500 to 367.533. The
18 licensing year shall commence on January first and end the
19 following December thirty-first. The director may establish a
20 biennial licensing arrangement but in no case shall the fees be
21 payable for more than one year at a time. Each license shall be
22 uniquely numbered and shall not be transferable or assignable.
23 [Renewal licenses shall be effective for a period of one year.]

24 408.140. 1. No further or other charge or amount
25 whatsoever shall be directly or indirectly charged, contracted

1 for or received for interest, service charges or other fees as an
2 incident to any such extension of credit except as provided and
3 regulated by sections 367.100 to 367.200, RSMo, and except:

4 (1) On loans for thirty days or longer which are other than
5 "open-end credit" as such term is defined in the federal Consumer
6 Credit Protection Act and regulations thereunder, a fee, not to
7 exceed five percent of the principal amount loaned not to exceed
8 seventy-five dollars may be charged by the lender; however, no
9 such fee shall be permitted on any extension, refinance,
10 restructure or renewal of any such loan, unless any investigation
11 is made on the application to extend, refinance, restructure or
12 renew the loan;

13 (2) The lawful fees actually and necessarily paid out by
14 the lender to any public officer for filing, recording, or
15 releasing in any public office any instrument securing the loan,
16 which fees may be collected when the loan is made or at any time
17 thereafter; however, premiums for insurance in lieu of perfecting
18 a security interest required by the lender may be charged if the
19 premium does not exceed the fees which would otherwise be
20 payable;

21 (3) If the contract so provides, a charge for late payment
22 on each installment or minimum payment in default for a period of
23 not less than fifteen days in an amount not to exceed five
24 percent of each installment due or the minimum payment due or
25 [twenty-five] fifteen dollars, whichever is [less] greater;

1 except that, a minimum charge of ten dollars may be made. If the
2 contract so provides, a charge for late payment on each
3 twenty-five dollars or less installment in default for a period
4 of not less than fifteen days shall not exceed five dollars;

5 (4) If the contract so provides, a charge for late payment
6 for a single payment note in default for a period of not less
7 than fifteen days in an amount not to exceed five percent of the
8 payment due; provided that, the late charge for a single payment
9 note shall not exceed fifty dollars;

10 (5) Charges or premiums for insurance written in connection
11 with any loan against loss of or damage to property or against
12 liability arising out of ownership or use of property as provided
13 in section 367.170, RSMo; however, notwithstanding any other
14 provision of law, with the consent of the borrower, such
15 insurance may cover property all or part of which is pledged as
16 security for the loan, and charges or premiums for insurance
17 providing life, health, accident, or involuntary unemployment
18 coverage;

19 (6) Charges assessed by any institution for processing a
20 refused instrument plus a handling fee of not more than [fifteen]
21 twenty-five dollars;

22 (7) If the contract or promissory note, signed by the
23 borrower, provides for attorney fees, and if it is necessary to
24 bring suit, such attorney fees may not exceed fifteen percent of
25 the amount due and payable under such contract or promissory

1 note, together with any court costs assessed. The attorney fees
2 shall only be applicable where the contract or promissory note is
3 referred for collection to an attorney, and is not handled by a
4 salaried employee of the holder of the contract;

5 (8) Provided the debtor agrees in writing, the lender may
6 collect a fee in advance for allowing the debtor to defer up to
7 three monthly loan payments, so long as the fee is no more than
8 the lesser of fifty dollars or ten percent of the loan payments
9 deferred, no extensions are made until the first loan payment is
10 collected and no more than one deferral in a twelve-month period
11 is agreed to and collected on any one loan; this subdivision
12 applies to nonprecomputed loans only and does not affect any
13 other subdivision;

14 (9) If the open-end credit contract is tied to a
15 transaction account in a depository institution, such account is
16 in the institution's assets and such contract provides for loans
17 of thirty-one days or longer which are "open-end credit", as such
18 term is defined in the federal Consumer Credit Protection Act and
19 regulations thereunder, the creditor may charge a credit advance
20 fee of the lesser of twenty-five dollars or five percent of the
21 credit advanced from time to time from the line of credit; such
22 credit advance fee may be added to the open-end credit
23 outstanding along with any interest, and shall not be considered
24 the unlawful compounding of interest as that term is defined in
25 section 408.120.

1 2. Other provisions of law to the contrary notwithstanding,
2 an open-end credit contract under which a credit card is issued
3 by a company, financial institution, savings and loan or other
4 credit issuing company whose credit card operations are located
5 in Missouri may charge an annual fee, provided that no finance
6 charge shall be assessed on new purchases other than cash
7 advances if such purchases are paid for within twenty-five days
8 of the date of the periodic statement therefor.

9 3. Notwithstanding any other provision of law to the
10 contrary, in addition to charges allowed pursuant to section
11 408.100, an open-end credit contract provided by a company,
12 financial institution, savings and loan or other credit issuing
13 company which is regulated pursuant to this chapter may charge an
14 annual fee not to exceed fifty dollars.

15 408.233. 1. No charge other than that permitted by section
16 408.232 shall be directly or indirectly charged, contracted for
17 or received in connection with any second mortgage loan, except
18 as provided in this section:

19 (1) Fees and charges prescribed by law actually and
20 necessarily paid to public officials for perfecting, releasing,
21 or satisfying a security interest related to the second mortgage
22 loan;

23 (2) Taxes;

24 (3) Bona fide closing costs paid to third parties, which
25 shall include:

1 (a) Fees or premiums for title examination, title
2 insurance, or similar purposes including survey;

3 (b) Fees for preparation of a deed, settlement statement,
4 or other documents;

5 (c) Fees for notarizing deeds and other documents;

6 (d) Appraisal fees; and

7 (e) Fees for credit reports;

8 (4) Charges for insurance as described in subsection 2 of
9 this section;

10 (5) A nonrefundable origination fee not to exceed five
11 percent of the principal which may be used by the lender to
12 reduce the rate on a second mortgage loan;

13 (6) Any amounts paid to the lender by any person,
14 corporation or entity, other than the borrower, to reduce the
15 rate on a second mortgage loan or to assist the borrower in
16 qualifying for the loan;

17 (7) For revolving loans, an annual fee not to exceed fifty
18 dollars may be assessed.

19 2. An additional charge may be made for insurance written
20 in connection with the loan, including insurance protecting the
21 lender against the borrower's default or other credit loss, and:

22 (1) For insurance against loss of or damage to property
23 where no such coverage already exists; and

24 (2) For insurance providing life, accident, health or
25 involuntary unemployment coverage.

1 3. The cost of any insurance shall not exceed the rates
2 filed with the division of insurance, and the insurance shall be
3 obtained from an insurance company duly authorized to conduct
4 business in this state. Any person or entity making second
5 mortgage loans, or any of its employees, may be licensed to sell
6 insurance permitted in this section.

7 4. On any second mortgage loan, a default charge may be
8 contracted for and received for any installment or minimum
9 payment not paid in full within fifteen days of its scheduled due
10 date equal to five percent of the amount or ~~twenty-five~~ fifteen
11 dollars, whichever is ~~less~~ greater. A default charge may be
12 collected only once on an installment or a payment due however
13 long it remains in default. A default charge may be collected at
14 the time it accrues or at any time thereafter and for purposes of
15 subsection 3 of section 408.234 a default charge shall be treated
16 as a payment. No default charge may be collected on an
17 installment or a payment due which is paid in full within fifteen
18 days of its scheduled due date even though an earlier installment
19 or payment or a default charge on earlier installment or payments
20 may not have been paid in full.

21 5. The lender shall, in addition to the charge authorized
22 by subsection 4 of this section, be allowed to assess the
23 borrower or other maker of refused instrument the actual charge
24 made by any institution for processing the negotiable instrument,
25 plus a handling fee of not more than ~~fifteen~~ twenty-five

1 dollars; and, if the contract or promissory note, signed by the
2 borrower, provides for attorney fees, and if it is necessary to
3 bring suit, such attorney fees may not exceed fifteen percent of
4 the amount due and payable under such contract or promissory
5 note, together with any court costs assessed. The attorney fees
6 shall only be applicable where the contract or promissory note is
7 referred for collection to an attorney, and are not handled by a
8 salaried employee of the holder of the contract or note.

9 408.500. 1. Lenders, other than banks, trust companies,
10 credit unions, savings banks and savings and loan companies, in
11 the business of making unsecured loans of five hundred dollars or
12 less shall obtain a license from the director of the division of
13 finance. An annual license fee of three hundred dollars per
14 location shall be required. The license year shall commence on
15 January first each year and the license fee may be prorated for
16 expired months. The director may establish a biennial licensing
17 arrangement but in no case shall the fees be payable for more
18 than one year at a time. The provisions of this section shall
19 not apply to pawnbroker loans, consumer credit loans as
20 authorized under chapter 367, RSMo, nor to a check accepted and
21 deposited or cashed by the payee business on the same or the
22 following business day. The disclosures required by the federal
23 Truth in Lending Act and regulation Z shall be provided on any
24 loan, renewal or extension made pursuant to this section and the
25 loan, renewal or extension documents shall be signed by the

1 borrower.

2 2. Entities making loans pursuant to this section shall
3 contract for and receive simple interest and fees in accordance
4 with sections 408.100 and 408.140. Any contract evidencing any
5 fee or charge of any kind whatsoever, except for bona fide
6 clerical errors, in violation of this section shall be void. Any
7 person, firm or corporation who receives or imposes a fee or
8 charge in violation of this section shall be guilty of a class A
9 misdemeanor.

10 3. Notwithstanding any other law to the contrary, cost of
11 collection expenses, which include court costs and reasonable
12 attorneys fees, awarded by the court in suit to recover on a bad
13 check or breach of contract shall not be considered as a fee or
14 charge for purposes of this section.

15 4. Lenders licensed pursuant to this section shall
16 conspicuously post in the lobby of the office, in at least
17 fourteen-point bold type, the maximum annual percentage rates
18 such licensee is currently charging and the statement:

19 NOTICE:

20 This lender offers short-term loans. Please read and
21 understand the terms of the loan agreement before signing.

22 5. The lender shall provide the borrower with a notice in
23 substantially the following form set forth in at least ten-point
24 bold type, and receipt thereof shall be acknowledged by signature
25 of the borrower:

1 (1) This lender offers short-term loans. Please read and
2 understand the terms of the loan agreement before signing.

3 (2) You may cancel this loan without costs by returning the
4 full principal balance to the lender by the close of the lender's
5 next full business day.

6 6. The lender shall renew the loan upon the borrower's
7 written request and the payment of any interest and fees due at
8 the time of such renewal; however, upon the first renewal of the
9 loan agreement, and each subsequent renewal thereafter, the
10 borrower shall reduce the principal amount of the loan by not
11 less than five percent of the original amount of the loan until
12 such loan is paid in full. However, no loan may be renewed more
13 than six times.

14 7. When making or negotiating loans, a licensee shall
15 consider the financial ability of the borrower to reasonably
16 repay the loan in the time and manner specified in the loan
17 contract. All records shall be retained at least two years.

18 8. A licensee who ceases business pursuant to this section
19 must notify the director to request an examination of all records
20 within ten business days prior to cessation. All records must be
21 retained at least two years.

22 9. Any lender licensed pursuant to this section who fails,
23 refuses or neglects to comply with the provisions of this
24 section, or any laws relating to consumer loans or commits any
25 criminal act may have its license suspended or revoked by the

1 director of finance after a hearing before the director on an
2 order of the director to show cause why such order of suspension
3 or revocation should not be entered specifying the grounds
4 therefor which shall be served on the licensee at least ten days
5 prior to the hearing.

6 10. Whenever it shall appear to the director that any
7 lender licensed pursuant to this section is failing, refusing or
8 neglecting to make a good faith effort to comply with the
9 provisions of this section, or any laws relating to consumer
10 loans, the director may issue an order to cease and desist which
11 order may be enforceable by a civil penalty of not more than one
12 thousand dollars per day for each day that the neglect, failure
13 or refusal shall continue. The penalty shall be assessed and
14 collected by the director. In determining the amount of the
15 penalty, the director shall take into account the appropriateness
16 of the penalty with respect to the gravity of the violation, the
17 history of previous violations, and such other matters as justice
18 may require.